

AMENDED IN ASSEMBLY AUGUST 5, 2013

AMENDED IN ASSEMBLY JUNE 20, 2013

AMENDED IN ASSEMBLY JUNE 18, 2013

AMENDED IN ASSEMBLY JUNE 10, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 568

Introduced by Senator Steinberg

February 22, 2013

An act to add Chapter 22.1 (commencing with Section 22580) to Division 8 of the Business and Professions Code, relating to the Internet.

LEGISLATIVE COUNSEL'S DIGEST

SB 568, as amended, Steinberg. Privacy: Internet: minors.

Existing law requires an operator of a commercial Web site or online service that collects personally identifiable information through the Internet about individual consumers residing in California who use or visit its commercial Web site or online service to make its privacy policy available to consumers, as specified.

Existing federal law requires an operator of an Internet Web site or online service directed to a child, as defined, or an operator of an Internet Web site or online service that has actual knowledge that it is collecting personal information from a child to provide notice of what information is being collected and how that information is being used, and to give the parents of the child the opportunity to refuse to permit the operator's further collection of information from the child.

This bill would, on and after January 1, 2015, prohibit an operator of an Internet Web site, online service, online application, or mobile

application, as specified, from marketing or advertising specified types of products or services to a minor. The bill would prohibit an operator from *knowingly* using, disclosing, or compiling, or ~~knowingly~~ allowing a 3rd party to use, disclose, or compile, the personal information of a minor for the purpose of marketing or advertising specified types of products or services. The bill would also make this prohibition applicable to an advertising service that is notified by an operator of an Internet Web site, online service, online application, or mobile application that the site, service, or application is directed to a minor.

The bill would, on and after January 1, 2015, require the operator of an Internet Web site, online service, online application, or mobile application to permit a minor, who is a registered user of the operator's Internet Web site, online service, online application, or mobile application, to remove, or to request and obtain removal of, content or information posted on the operator's Internet Web site, service, or application by the minor, unless the content or information was posted by a 3rd party, any other provision of state or federal law requires the operator or 3rd party to maintain the content or information, or the operator anonymizes the content or information. The bill would require the operator to provide notice to a minor that the minor may remove the content or information, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 22.1 (commencing with Section 22580)
2 is added to Division 8 of the Business and Professions Code, to
3 read:

4
5 CHAPTER 22.1. PRIVACY RIGHTS FOR CALIFORNIA MINORS IN
6 THE DIGITAL WORLD

7
8 22580. (a) An operator of an Internet Web site, online service,
9 online application, or mobile application directed to minors ~~or the~~
10 *shall not market or advertise a product or service described in*
11 *subdivision (i) on its Internet Web site, online service, online*
12 *application, or mobile application directed to minors.*

13 (b) An operator of an Internet Web site, online service, online
14 application, or mobile application ~~that has actual knowledge that~~

1 ~~a minor is using its Internet Web site, online service, online~~
2 ~~application, or mobile application shall not do any of the following:~~
3 ~~shall not market or advertise a product or service described in~~
4 ~~subdivision (i) to a minor who the operator has actual knowledge~~
5 ~~is using its Internet Web site, online service, online application,~~
6 ~~or mobile application and is a minor, if the marketing or~~
7 ~~advertising is specifically directed to that minor based upon~~
8 ~~information specific to that minor, including, but not limited to,~~
9 ~~the minor's profile, activity, address, or location sufficient to~~
10 ~~establish contact with a minor, and excluding Internet Protocol~~
11 ~~(IP) address and product identification numbers for the operation~~
12 ~~of a service.~~

13 ~~(1) Market or advertise a product or service on the Internet Web~~
14 ~~site, online service, online application, or mobile application~~
15 ~~directed to minors, or to a minor who the operator has actual~~
16 ~~knowledge is using its Internet Web site, online service, online~~
17 ~~application, or mobile application if the marketing or advertising~~
18 ~~is for a product described in subdivision (g).~~

19 ~~(2) Use,~~

20 ~~(c) An operator of an Internet Web site, online service, online~~
21 ~~application, or mobile application directed to minors or who has~~
22 ~~actual knowledge that a minor is using its Internet Web site, online~~
23 ~~service, online application, or mobile application, shall not~~
24 ~~knowingly use, disclose, compile, or knowingly allow a third party~~
25 ~~to use, disclose, or compile, the personal information of a minor~~
26 ~~with actual knowledge that the use, disclosure, or compilation is~~
27 ~~for the purpose of marketing or advertising products or services~~
28 ~~if the marketing or advertising is for a product described in~~
29 ~~subdivision (g) (i).~~

30 ~~(b)~~

31 ~~(d) "Minor" means a natural person under 18 years of age who~~
32 ~~resides in the state.~~

33 ~~(e)~~

34 ~~(e) "Internet Web site, online service, online application, or~~
35 ~~mobile application directed to minors" mean an Internet Web site,~~
36 ~~online service, online application, or mobile application, or a~~
37 ~~portion thereof, that is created for the purpose of reaching an~~
38 ~~audience that is primarily predominately comprised of minors, and~~
39 ~~is not intended for a more general audience comprised of adults.~~
40 ~~Provided, however, that an Internet Web site, online service, online~~

1 application, or mobile application, or a portion thereof, shall not
2 be deemed to be directed at minors solely because it refers or links
3 to an Internet Web site, online service, online application, or mobile
4 application directed to minors by using information location tools,
5 including a directory, index, reference, pointer, or hypertext link.

6 ~~(d)~~

7 (f) “Operator” means any person or entity that owns an Internet
8 Web site, online service, online application, or mobile application.
9 It does not include any third party that operates, hosts, or manages,
10 but does not own, an Internet Web site, online service, online
11 application, or mobile application on the owner’s behalf or
12 processes information on the owner’s behalf.

13 ~~(e)~~

14 (g) This section shall not be construed to require an operator of
15 an Internet Web site, online service, online application, or mobile
16 application to collect or retain age information about users.

17 ~~(f)~~

18 (h) (1) With respect to marketing or advertising provided by
19 an advertising service, the operator of an Internet Web site, online
20 service, online application, or mobile application directed to minors
21 shall be deemed to be in compliance with subdivision (a) if the
22 operator notifies the advertising service, in the manner required
23 by the advertising service, that the site, service, or application is
24 directed to minors.

25 (2) If an advertising service is notified, in the manner required
26 by the advertising service, that an Internet Web site, online service,
27 online application, or mobile application is directed to minors
28 pursuant to paragraph (1), the advertising service shall not market
29 or advertise a product or service on the operator’s Internet Web
30 site, online service, online application, or mobile application that
31 ~~state or federal law expressly prohibits a minor from purchasing~~
32 *is described in subdivision (i).*

33 ~~(g)~~

34 (i) The marketing and advertising restrictions described in
35 ~~subdivision~~ *subdivisions (a) and (b)* shall apply to the following
36 products and services as they are defined under state law:

37 (1) Alcoholic beverages, as referenced in Sections 23003 to
38 23009, inclusive, and Section 25658.

39 (2) Firearms or handguns, as referenced in Sections 16520,
40 16640, and 27505 of the Penal Code.

1 (3) Ammunition or reloaded ammunition, as referenced in
2 Sections 16150 and 30300 of the Penal Code.

3 (4) Handgun safety certificates, as referenced in Sections 31625
4 and 31655 of the Penal Code.

5 (5) Aerosol container of paint that is capable of defacing
6 property, as referenced in Section 594.1 of the Penal Code.

7 (6) Etching cream that is capable of defacing property, as
8 referenced in Section 594.1 of the Penal Code.

9 (7) Any tobacco, cigarette, or cigarette papers, or ~~blunts~~ *blunt*
10 wraps, or any other preparation of tobacco, or any other instrument
11 or paraphernalia that is designed for the smoking or ingestion of
12 tobacco, products prepared from tobacco, or any controlled
13 substance, as referenced in Division 8.5 (commencing with Section
14 22950) and Sections 308, 308.1, 308.2, *and* 308.3 of the Penal
15 Code.

16 (8) BB device, as referenced in Sections 16250 and 19910 of
17 the Penal Code.

18 (9) Dangerous fireworks, as referenced in Sections 12505 and
19 12689 of the Health and Safety Code.

20 (10) Tanning in an ultraviolet tanning device, as referenced in
21 Sections 22702 and 22706.

22 (11) Dietary supplement products containing ephedrine group
23 alkaloids, as referenced in ~~Sections~~ *Section* 110423.2 of the Health
24 and Safety Code.

25 (12) Tickets or shares in a lottery game, as referenced in Sections
26 8880.12 and 8880.52 of the Government Code.

27 (13) Salvia divinorum or Salvinorin A, or any substance or
28 material containing Salvia divinorum or Salvinorin A, as referenced
29 in Section 379 of the Penal Code.

30 ~~(14) Body piercing, as referenced in Section 119302 of the~~
31 ~~Health and Safety Code and Section 652 of the Penal Code.~~

32 ~~(15)~~

33 ~~(14)~~ Body branding, as referenced in Sections 119301 and
34 119302 of the Health and Safety Code.

35 ~~(16)~~

36 ~~(15)~~ Permanent tattoo, as referenced in Sections 119301 and
37 119302 of the Health and Safety Code and Section 653 of the Penal
38 Code.

39 ~~(17)~~

1 (16) Drug paraphernalia, as referenced in Section 11364.5 of
2 the Health and Safety Code.

3 ~~(18)~~

4 (17) Electronic cigarette, as referenced in Section 119405 of
5 the Health and Safety Code.

6 ~~(19) Harmful matter or obscene~~

7 (18) *Obscene* matter, as referenced in ~~Sections~~ Section 311;
8 313, and 313.1 of the Penal Code.

9 ~~(20) Laser pointer, as referenced in Sections 417.25 and 417.27~~
10 ~~of the Penal Code.~~

11 ~~(21)~~

12 (19) A less lethal weapon, as referenced in Sections 16780 and
13 19405 of the Penal Code.

14 (j) *The marketing and advertising restrictions described in*
15 *subdivisions (a), (b), and (c) shall not apply to the incidental*
16 *placement of products or services embedded in content if the*
17 *content is not created primarily for the purposes of marketing and*
18 *advertising of the products or services described in (i).*

19 22581. (a) An operator of an Internet Web site, online service,
20 online application, or mobile application directed to minors or an
21 operator of an Internet Web site, online service, online application,
22 or mobile application that has actual knowledge that a minor is
23 using its Internet Web site, online service, online application, or
24 mobile application shall do all of the following:

25 (1) Permit a minor who is a registered user of the operator's
26 Internet Web site, online service, online application, or mobile
27 application to remove; or, *if the operator prefers*, to request and
28 obtain removal of, content or information posted on the operator's
29 Internet Web site, online service, online application, or mobile
30 application by the user.

31 (2) Provide notice to a minor who is a registered user of the
32 operator's Internet Web site, online service, online application, or
33 mobile application that the minor may remove; or, *if the operator*
34 *prefers*, request and obtain removal of, content or information
35 posted on the operator's Internet Web site, online service, online
36 application, or mobile application by the registered user.

37 (3) Provide clear instructions to a minor who is a registered user
38 of the operator's Internet Web site, online service, online
39 application, or mobile application on how the user may *remove*
40 *or, if the operator prefers*, request and obtain the removal of

1 content or information posted on the operator's Internet Web site,
2 online service, online application, or mobile application.

3 (4) Provide notice to a minor who is a registered user of the
4 operator's Internet Web site, online service, online application, or
5 mobile application that the removal described under ~~subdivision~~
6 ~~(b)~~ *paragraph (1)* does not ensure complete or comprehensive
7 removal of the content or information posted on the operator's
8 Internet Web site, online service, online application, or mobile
9 application by the registered user.

10 (b) An operator or a third party is not required to erase or
11 otherwise eliminate, or to enable erasure or elimination of, content
12 or information in any of the following circumstances:

13 (1) Any other provision of federal or state law requires the
14 operator or third party to maintain the content or information.

15 (2) The content or information was posted to the operator's
16 Internet Web site, online service, online application, or mobile
17 application by a third party other than the minor, who is a registered
18 user, including any content or information posted by the registered
19 user that was republished or reposted by the third party.

20 (3) The operator anonymizes the content or information posted
21 by the minor who is a registered user, so that the minor who is a
22 registered user cannot be individually identified.

23 (4) The minor does not follow the instructions provided to the
24 minor pursuant to paragraph (3) of subdivision (a) on how the
25 registered user may request and obtain the removal of content or
26 information posted on the operator's Internet Web site, online
27 service, online application, or mobile application by the registered
28 user.

29 (5) The minor has received compensation or other consideration
30 for providing the content.

31 (c) This section shall not be construed to limit the authority of
32 a law enforcement agency to obtain any content or information
33 from an operator as authorized by law or pursuant to an order of
34 a court of competent jurisdiction.

35 (d) An operator shall be deemed compliant with this section if:

36 (1) It renders the content or information posted by the minor
37 user no longer visible to other users of the service and the public
38 even if the content or information remains on the operator's servers
39 in some form.

1 (2) Despite making the original posting by the minor user
2 invisible, it remains visible because a third party has copied the
3 posting or reposted the content or information posted by the minor.

4 (e) This section shall not be construed to require an operator ~~or~~
5 of an Internet Web site, online service, online application, or
6 mobile application to collect age information about users.

7 (f) “Posted” means content or information that can be accessed
8 by a user in addition to the minor who posted the content or
9 information, whether the user is a registered user or not, of the
10 Internet Web site, online service, online application, or mobile
11 application where the content or information is posted.

12 22582. This chapter shall become operative on January 1, 2015.

13 *SEC. 2. The provisions of this act are severable. If any*
14 *provision of this act or its application is held invalid, that invalidity*
15 *shall not affect other provisions or applications that can be given*
16 *effect without the invalid provision or application.*